

APPENDIX L

NEW JERSEY EMBARKATION POINT AGREEMENTS

Current MOU between New Jersey and Existing Concessioner

MOU for Future Agreement

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY

MEMORANDUM OF UNDERSTANDING
CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.

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STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, made the day of in the year Two Thousand
Four (2004)

BETWEEN THE STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY
501 East State Street, 4th Floor
PO Box 404
Trenton, New Jersey 08625-0404

AND CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.
Suite 715
17 Battery Place
New York, New York 10004

WHEREAS, the National Park Service, hereinafter referred to as Service, has contracted for passenger ferry transportation from Liberty State Park, New Jersey, to Liberty and Ellis Islands with a concessionaire, Circle Line-Statue of Liberty Ferry, Inc., a New York Corporation, hereinafter referred to as Statue Ferry; and

WHEREAS, the State of New Jersey, Department of Environmental Protection and its Division of Parks and Forestry, hereinafter referred to as New Jersey, has determined that the provision of facilities and services so that the public may visit the Statue of Liberty and Ellis Island is consistent with the effective administration of Liberty State Park for public recreation; and

WHEREAS, the parties hereto entered into a Memorandum of Understanding, effective June 13, 1994, hereinafter referred to as Agreement, whereby New Jersey made available to Statue Ferry temporary pier and ticketing facilities until permanent facilities were available by New Jersey for the operation of passenger ferry transportation service from Liberty State Park, New Jersey to Liberty and Ellis Islands within Statue of Liberty National Monument; and

WHEREAS, the parties entered into three (3) Amendments to the Agreement, with Amendment No. One going into effect on January 21, 1998 and Amendments No. Two and Three effective March 31, 1999 and letter of June 16, 2004, pending execution of this Agreement; and

WHEREAS, New Jersey has available mooring facilities, ticketing space and visitor waiting space and has determined to make these available for use in support of the passenger ferry service desired by the Service; and

WHEREAS, Statue Ferry has agreed to make appropriate payments for use of the facilities provided to it by New Jersey at Liberty State Park for the support of this service; and

NOW THEREFORE, the parties hereto agree to enter into this Memorandum of Understanding, hereinafter referred to as Agreement, as follows:

1. NEW JERSEY

A. Shall continue to provide to Statue Ferry a permanent location on the first floor of the restored CRRNJ Terminal Building for use as a visitor staging area and the operation of its ticketing facilities as shown on Exhibit A, attached hereto and made a part hereof, and additional external patron waiting space in the cross-hatched areas along the North Baggage Tunnel and the Ferry Concourse, together with mooring facilities at the Pier identified as Circle Line Dock as shown in Exhibit A-1, attached hereto and made a part hereof.

B. The permanent facilities designated pursuant to Paragraph A above are to be used by Statue Ferry for the purpose of the Agreement while the same remains in effect and Statue Ferry continues to be authorized by Concession Contract with Service to conduct ferry operations.

- (I) The pier located in the area described in Exhibit A-1 will be made available to Statue Ferry on an exclusive basis during Statue Ferry's regularly scheduled hours of operation from Liberty State Park.
- (ii) Notwithstanding B(I) above, New Jersey shall remain in ultimate control of any and all space covered by this Agreement. It may allow persons other than Statue Ferry to utilize the pier described in B(I) above with the prior written approval of Statue Ferry which shall not unreasonably be withheld.
- (iii) In the event that New Jersey permits or allows any person to use the pier in B(I) above, New Jersey shall, as a pre-condition of said use, require the person to provide New Jersey with a surety bond or other guarantee in cash or cash equivalent satisfactory to New Jersey and Statue Ferry in an amount and form satisfactory to New Jersey and Statue Ferry guaranteeing the repair of any damage to the docking facility resulting from the person's use, reimbursing Statue Ferry for loss of business during interruption of Statue Ferry's operations due to such damage and repair, and payment to New Jersey of pro-rata fees due to be paid by Statue Ferry to New Jersey during such period. The bond or guarantee shall name New Jersey and Statue Ferry as co-obligees.

Statue Ferry shall have the option to repair damage inflicted by any said third (3rd) party utilizing therefor the proceeds from the said surety bond or other guarantee in cash or cash equivalent, except as provided for in Paragraphs 19D and 23A. Such repairs shall be subject to the prior written approval of New Jersey.

- (iv) Shall provide public restroom facilities in the CRRNJ Terminal Building, maintain them, provide the necessary cleaning of them, and provide the necessary supplies and utilities for their care and support.
- (v) Shall provide parking facilities for automobiles and buses. The number and location of parking facilities shall be determined by New Jersey.
- (vi) Shall clean and maintain and provide all necessary utilities for the grounds, public areas of buildings and related spaces, furniture, and fixtures not including areas provided for the exclusive use of or devoted to the sole purpose of supporting Statue Ferry which shall be Statue Ferry's responsibility.
- (vii) Shall encourage public transportation service to the ferry-service facilities area and shall take such action as can reasonably be taken to facilitate that transportation and public access to and from that transportation.
- (viii) Shall clear snow as may be necessary, except in the area of Statue Ferry liability shown on Exhibit A-1.
- (ix) Shall not authorize others to operate or conduct activities in the ferry service facilities area that will interfere with the scheduled service to be conducted by Statue Ferry. New Jersey's food and beverage concessionaire at Liberty State Park shall be allowed to operate mobile concession carts in the ferry service facilities area for the purpose of selling food and beverages to Statue Ferry's customers waiting to buy tickets, waiting to board the ferry or disembarking from the ferry. However, New Jersey's food and beverage concessionaire shall be required by New Jersey to remove its carts from the immediate loading area as more specifically described on Exhibit A-1 when Statue Ferry's vessels are loading and unloading passengers. In addition, New Jersey may authorize other ferries to operate out of Liberty State Park so long as those other ferries do not interfere with Statue Ferry's scheduled service at Liberty State Park, and so long as those other ferries do not interfere with whatever contractual rights Statue Ferry has to provide passenger ferry service to Liberty and Ellis Islands.
- (x) Shall supply and install directional and informational signs in Liberty State Park about the ferry service and/or will permit them to be supplied and installed by Statue Ferry with the prior written approval of New Jersey and insofar as they conform to the signing practices and policies acceptable to New Jersey within Liberty State Park.
- (xi) Shall request that all reasonable steps are taken by the appropriate authorities of the State of New Jersey to provide directional signing to the "Statue of Liberty and Ellis Island Ferry" from the New Jersey Turnpike at Exit 14B and at other appropriate roadway points in advance of Exit 14B.

2. STATUE FERRY

A. Shall provide all of the necessary equipment, supplies and personnel and shall operate the New Jersey ferry service as required in the concession contract between Service and Statue Ferry and in this Agreement

B. Shall use the building, land, and docking space provided by New Jersey only for the operation of the scheduled ferry service described in this Agreement and to pick-up and discharge passengers as part of that scheduled ferry service during regularly scheduled Park operating hours. Statue Ferry shall, upon prior notification to the Superintendent of Liberty State Park of not less than forty-eight (48) hours, be permitted to use the ferry service facilities for charters and special groups as part of the ferry service described in this Agreement. This Agreement does not authorize the conduct of any service other than the ferry service specifically described herein and specifically does not include the sale of products or the sale of foods or the sale of beverages or the sale of any products through vending machines from the building, land and docking space provided by New Jersey.

- (I) Statue Ferry and/or any person or entity which owns a controlling interest in Statue Ferry's ownership shall not assign or otherwise sell or transfer responsibilities under this Agreement or the concession operations authorized hereunder, nor sell or otherwise assign or transfer (including but not limited to, mergers, consolidations, reorganizations, or other business combinations), a controlling interest in such operations, this Agreement or a controlling interest in Statue Ferry's ownership without the prior written approval of the Secretary of the United States Department of the Interior (the "Secretary") and without having notified New Jersey of the proposal and the Secretary's approval of it.
- (ii) Statue Ferry may not enter into any agreement with any entity or person except employees of Statue Ferry to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without written approval of the Service at least thirty (30) days in advance of such transaction.

C. Understands and agrees that this Agreement is not a lease and that no building, space, or equipment is leased to Statue Ferry by New Jersey. Statue Ferry shall have the use of the buildings, space, and docks provided by New Jersey, except as herein provided, and may occupy them, operate them only for the purposes herein established, and continue in possession thereof for the term of this Agreement unless this Agreement is sooner terminated by New Jersey as hereinafter provided in Paragraph 27 and only so long as Statue Ferry remains concessionaire authorized to provide ferry service to Ellis and Liberty Islands by Service.

3. TERM OF AGREEMENT

A. The initial term of this Agreement (the "Initial Term") shall be for a period commencing on the effective date of this Agreement and expiring on the third (3rd) anniversary thereof, unless sooner terminated as hereinafter provided in Paragraph 27 or until the expiration or termination of the concession contract between Statue Ferry and Service, whichever may from time to time be shorter. For the purposes of this Agreement, the Effective Date shall be the date on which the last of the following has occurred:

- (I) this Agreement is signed on behalf of New Jersey and Statue Ferry; Statue Ferry provides and New Jersey accepts the Operation and Management Plan as set forth Paragraph 6 hereof;

- (ii) the letter of credit required under Paragraph 16 hereof is received and approved by Department;
- (iii) the certificate of insurance required under Paragraph 18 hereof is received and approved by New Jersey;
- (iv) Statue Ferry provides New Jersey with satisfactory evidence that Statue Ferry has obtained all licenses, permits, authorizations or any documents required by any applicable government agency having jurisdiction over the Statue Ferry premises and/or the conduct of Statue Ferry's operations thereon as required under Paragraph 13 hereof;
- (v) Corporate resolution has been received by New Jersey, as required under Paragraph 29; and
- (vi) this Agreement is dated by New Jersey and forwarded to Statue Ferry by Certified Mail.

B. Provided that Statue Ferry shall keep, observe and perform all of the terms, covenants and conditions of this Agreement on Statue Ferry's part to be kept, observed and performed and provided further that the concession contract between Statue Ferry and Service shall be in full force and effect, Statue Ferry shall have the right to extend the Initial Term of this Agreement if the concession contract between Statue Ferry and Service is extended. The Initial Term and any Renewal Term are collectively herein referred to as the "Term". In order to exercise right to renew this Agreement, Statue Ferry shall notify New Jersey, in writing by certified mail, return receipt requested, not less than twelve (12) months prior to the expiration of the then existing Term hereof, that Statue Ferry's concession contract with Service has been extended and the Statue Ferry elects to extend the Term of this Agreement, and provided further that this Agreement, as extended, shall be upon the same terms, covenants and conditions as are contained herein, except as to the duration of the Term hereof, the consideration to be paid under Paragraph 4 of this Agreement during the renewal term, any amendments approved during the Term, and any other provisions of this Agreement which by their terms, are applicable only to any portions of the Term and, excluding, upon the expiration of the Renewal Term, any further option of extension.

4. RENT

A. Statue Ferry shall, on a calendar year basis beginning on April 1st and ending on March 31st (hereinafter referred to as the "Calendar Year"), pay to New Jersey as consideration for the privileges herein granted an annual fee which shall be an amount equal to the greater of Seventy Five Thousand (\$75,000.00) Dollars or seven (7%) percent of the Total Gross Revenue which for the purposes of this Agreement shall be the total gross revenue from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park during each said Calendar Year. For the purpose of this Agreement, stolen tickets shall be deemed to be accounted for. In the event that the New Jersey Sales Tax is imposed on the sale of tickets by Statue Ferry, the amount of New Jersey State Tax shall be excluded in the computation of Total Gross Revenue on which percentage fees are payable.

B. Statue Ferry shall pay the minimum annual fee of Seventy Five Thousand (\$75,000.00) Dollars to New Jersey in two (2) installments of Thirty Seven Thousand Five Hundred (\$37,500.00) Dollars each. The first (1st) installment shall be paid on or before June 1st of the then current Calendar Year. The second (2nd) installment shall be paid on or before October 1st of the then current Calendar Year. New Jersey shall make a final determination of the total payment due for said Calendar Year based on a certified audit of Total Gross Revenue. The audit shall be prepared by a certified public accountant and submitted by Statue Ferry in accordance with Paragraph 26E. In the event that the audit determines that the percentage of Total Gross Revenue for said Calendar Year is greater than the minimum annual fee, Statue Ferry shall, upon submission of the audit, pay such amount which in addition to the minimum fixed annual payment makes the total annual payment equal to seven (7%) percent of the Total Gross Revenues for said Calendar Year.

C. All payments shall be made to the Liberty State Park Superintendent by check made payable to "Treasurer - State of New Jersey". In the event that any check for payment is returned to New Jersey, all future compensation payments shall be made by certified or cashier check.

D. A one and one half (1 ½) percent payment penalty shall be assessed for any payment not posted to New Jersey on or prior to the payment dates specified in this Agreement. In addition, a one and one half (1 ½) percent monthly interest charge shall be applied to any unpaid balance for each thirty (30) day period or portion thereof that payment is delayed.

E. If Statue Ferry fails to pay the above consideration at such time and in such manner as specified therein, such failure shall constitute grounds for termination of this Agreement.

F. It is the intention of New Jersey and Statue Ferry that this Agreement shall yield to New Jersey the net annual compensation specified herein during the term of this Agreement, and that all costs, expenses and obligations of every kind and nature whatsoever relating to Statue Ferry's operations hereunder shall be paid by Statue Ferry. The compensation, additional compensation and any other sums payable hereunder by Statue Ferry shall be paid without notice or demand and without set-off, counterclaim, deduction, defense or deferment, except as provided for in Paragraph 19B of this Agreement.

G. If Statue Ferry shall fail to make or perform any payment or any act on its part to be made or performed under this Agreement, then:

- (i) upon Statue Ferry's failure to make such payment within thirty (30) days after Statue Ferry receives New Jersey's written notice thereof;
- (ii) upon Statue Ferry's failure to perform such act within thirty (30) days after Statue Ferry receives New Jersey's written notice thereof (or if such act is not capable of being performed within such thirty (30) day period, upon Statue Ferry's failure to commence to perform such act within such thirty (30) day period and diligently to complete such act thereafter; or
- (iii) without notice to Statue Ferry upon the occurrence of any emergency situation.

New Jersey may (but shall not be obligated to), without waiving any default or releasing Statue Ferry from any obligation, make such payment or perform such act for the account and the cost and expense of Statue Ferry. All sums so paid by New Jersey and all reasonable necessary and incidental costs and expenses (including reasonable attorney's fee and expenses) incurred in connection with the performance of any such act by New Jersey, together with interest at the Prime Rate plus three (3%) percent per annum from the date of the making of such payment or of the incurring of such costs and expenses by New Jersey, shall be payable by Statue Ferry, such amount constituting additional compensation hereunder.

H. The annual compensation payable by Statue Ferry during the Initial Term and any Renewal Term as provided in Paragraph 4A hereof shall be an amount equal to the greater of seven (7%) percent of the Total Gross Revenue as provided in Paragraph 4A above or the minimum fixed annual payment to become payable during each such year. The minimum fixed annual payment for any Renewal Term shall be agreed upon by New Jersey and Statue Ferry prior to the commencement of such Renewal Term and shall not be less than the minimum fixed annual compensation for the last year immediately preceding the commencement of such Renewal Term.

I. The parties acknowledge that:

- (I) as indicated in the Report of the Senate Committee on Appropriations relating to enactment of P.L. 102-143, it is likely that a pedestrian bridge will be opened that would link Liberty State Park and Ellis Island; and
- (ii) in addition to serving pedestrians, the bridge may also be used by emergency vehicles, solid waste vehicles, and vehicles necessary to support the Conference Center that may be built on Ellis Island.

If such a bridge is constructed or opened, or both, Statue Ferry agrees not to seek injunctive relief against the operation or construction of the bridge. Moreover, Statue Ferry agrees that its sole relief against New Jersey as the result of the construction or operation of the bridge, or both, is to have its percentage rate of rent reduced at one-half ($\frac{1}{2}$) the proportion as the number of ferry passengers from Liberty State Park to Ellis Island in each year following the opening of the bridge bears to the said number of ferry passengers in the year preceding the opening of the bridge, provided however, that in no event shall Statue Ferry's percentage rent be reduced below two and one-half (2.5%) percent of its Total Gross Revenue. For example, if Statue Ferry serves one-hundred (100) customers prior to the opening of the bridge, and only sixty (60) after its opening, its annual rent should be adjusted from seven (7%) percent to five and one half ($5\frac{1}{2}\%$) percent. This Agreement shall have no effect on whatever rights Statue Ferry otherwise may have.

- (iii) to seek money damages against any party other than New Jersey for damages, if any, sustained as a result of the construction or operation of the bridge; or
- (iv) to pursue its remedies against any party, including New Jersey, in any other matter involving this Agreement.

5. IMPROVEMENTS, REPAIRS OR MODIFICATIONS

A. In the event that Statue Ferry desires to make any improvements, repairs or modifications to the facilities herein provided, Statue Ferry shall, prior to commencing any improvements, construction, repairs, or modifications to the facilities provided by New Jersey under the terms of this Agreement, submit plans to New Jersey and obtain the written approval thereof by New Jersey.

B. Shall make alterations, repairs improvements or affix equipment to the real property of New Jersey provided for the purpose of this Agreement at the sole cost of Statue Ferry. Such alternations, repairs and all equipment affixed (except for ticket machines and other similarly affixed equipment provided by Statue Ferry and reasonably removable by Statue Ferry without damage to the property of New Jersey) shall become the property of New Jersey when made or affixed without payment of compensation therefor by New Jersey to Statue Ferry. Statue Ferry shall, at its sole cost and expense, obtain all licenses, permits, certificates and/or other documents of approval required by all public agencies having jurisdiction over the pier area and/or the work to be performed in any proposed alternation, repair, improvement, or installation of equipment. Statue Ferry shall, prior to the letting of a contract and the commencement of work, provide New Jersey with written evidence that all such licenses, permits, certificates and/or other documents of approval have been obtained. After completion of the work, Statue Ferry shall provide New Jersey with appropriate documentation that the work has been completed in accordance with the license, permit, certificate and/or other documents of approval. All written evidence and appropriate documentation of approval shall be submitted by Statue Ferry in form satisfactory to New Jersey.

C. Shall at its sole cost and expense, put, keep, and maintain the facilities and all equipment and improvements thereon provided by Statue Ferry or by New Jersey to Statue Ferry for Statue Ferry's exclusive use or for use exclusively in support of Statue Ferry's operations under the terms of this Agreement in good order and in full and complete repair to the satisfaction of New Jersey during the term of this Agreement. Such maintenance shall include all repairs and painting as directed by New Jersey. At the expiration or sooner termination of this Agreement, Statue Ferry shall surrender the facilities provided under this Agreement and all equipment and improvements affixed thereon (except for ticket machines and other similarly affixed equipment provided by Statue Ferry, and reasonably removable by Statue Ferry without damage to the property of New Jersey) in the same condition as was found by Statue Ferry, reasonable wear and tear excepted.

6. MANAGEMENT/OPERATION PLAN

Shall conduct its operation within Liberty State Park in accordance with a Management Plan approved by New Jersey and written Operations Plan to be identified as Exhibit B, attached hereto and made a part hereof, developed by the Superintendent, Statue of Liberty National Monument and Ellis Island and such modifications therein, if any, as may be directed by the said Superintendent during the term of this Agreement. Provisions included in such Plan shall be consistent with the management objectives of Liberty State Park and shall not interfere with public access to and enjoyment of Liberty State Park. Statue Ferry shall keep on file with New Jersey a current sailing schedule as approved from time to time by the Service.

7. UNIFORMS

Shall provide and/or require each employee working within Liberty State Park that comes into direct contact with the public to wear a uniform of a color and design approved by the Service and to wear a name tag with their names legibly printed thereon.

8. DISCRIMINATION

During the performance of this Agreement, the participants agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race color, religion, sex, age, sexual preference or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age, sexual preference or national origin.

9. SIGNAGE/ADVERTISING

A. Shall submit prior to publication, posting or broadcasting or other use all forms of signage/advertising pertaining to Statue Ferry's operations from Liberty State Park for the prior approval of New Jersey. Said approval shall not be unreasonably withheld.

B. Shall, in all promotion and advertisement of its operations from Liberty State Park under this Agreement, provide that such premises are administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry as part of Liberty State Park.

C. Shall not erect, post or paint signs within Liberty State Park without the prior written approval of New Jersey.

10. DANGEROUS SUBSTANCES

Shall not use, store, or permit to be stored on the property of New Jersey provided under this Agreement any illuminating oils, oil lamps, turpentine, benzene, naptha, or similar substances or any explosives of any kind or any substance or thing prohibited in the standard policies of fire insurance companies in the State of New Jersey.

11. CONDITION OF PREMISES

Shall keep at all times the premises provided by New Jersey under the terms of this Agreement neat and clean and in good order. Waste receptacles shall be provided by New Jersey for use by the public. All waste material shall be collected and stored in closed containers in a manner satisfactory to New Jersey and shall be disposed of by New Jersey.

12. PAYMENT FOR UTILITY SERVICE

Statue Ferry will provide its own telephone service at the CRRNJ Terminal Building. For un-metered utilities such as heat and air conditioning, the cost of such utilities shall be assessed by New Jersey to Statue Ferry on a per square foot basis.

13. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE

A. Shall obtain all necessary and required Federal and State licenses, permits and approvals for the operation of the activities described in this Agreement at Statue Ferry's expense and maintain such licenses, permits and approvals current throughout the duration of this Agreement. Statue Ferry shall submit copies of said licenses, permits, and approvals to New Jersey prior to signature of this Agreement by New Jersey.

B. Shall comply with all Federal and State laws, statutes and regulations pertaining to the activity authorized herein and to Liberty State Park.

14. VIOLATIONS/SUMMONS

Shall if Statue Ferry is issued a summons for violation of Federal or State requirements concerning the activities authorized in this Agreement, immediately forward a copy of the summons to New Jersey. Statue Ferry shall have such period of time to correct said violation as is prescribed in the summons. If such violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of this Agreement and New Jersey may in its discretion immediately suspend or terminate Statue Ferry's operations under this Agreement. Statue Ferry shall indemnify New Jersey against all liability, claims, loss, or payments of any kind arising from Statue Ferry's failure or omission to comply with any such law or regulation.

15. ALARM SYSTEM

The CRRNJ Terminal Building shall be secured by the use of an alarm system installed and to be maintained by New Jersey; provided however, that New Jersey shall not be responsible to Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors or invitees, express or implied, for loss, damage, or destruction of equipment or personal property on the area provided or any other State-owned property, except for the willful, malicious, deliberate or grossly negligent act of New Jersey, its officials, officers, agents, employees, successors, assignees, contractors or invitees. New Jersey shall be responsible for security of the area during use thereof by any person other than Statue Ferry as provided in Paragraph 1B(ii) of this Agreement and New Jersey shall be responsible to Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors or invitees, express or implied, for loss, damage or Destruction of equipment or personal property on the area provided or any other State-owned property caused by the negligent act of said person.

16. BANK LINE OF CREDIT - IRREVOCABLE LETTER OF CREDIT

Shall in order to assure its satisfactory performance of the terms and conditions of this Agreement, establish and maintain an irrevocable bank letter of credit in favor of New Jersey in the amount of Twenty Five Thousand (\$25,000.00) Dollars which shall be available for payment by the bank to New Jersey upon receipt from New Jersey of sufficient documentation that Statue Ferry is in default in the payment of money due and payable under this Agreement or that New Jersey has expended or may be required to expend any sum by reason of Statue Ferry's default of any terms, conditions, and covenants of this Agreement and that such sum has remained unpaid for not less than five (5) days, Statue Ferry shall not draw down on the letter of credit. In the event that New Jersey draws down on the letter of credit, Statue Ferry shall immediately restore the letter of credit to the full amount drawn down by New

Jersey. The amount of the letter of credit shall not represent a limitation on the liability of Statue Ferry. Statue Ferry shall maintain said irrevocable bank letter of credit in a form satisfactory to New Jersey for the duration of this Agreement and for a period of forty-five (45) days after the expiration or termination of this Agreement. Said letter of credit shall be submitted to and approved by New Jersey prior to New Jersey's final approval of this Agreement. In the event this Agreement is renewed, Statue Ferry shall prior to the commencement of operations for each Renewal Term, submit to New Jersey satisfactory written evidence from the bank that the irrevocable bank letter of credit is in full force and effect as above provided. The letter of credit shall not be available to Statue Ferry for any purpose or to any creditor of Statue Ferry in the event of the bankruptcy, reorganization, insolvency or receivership of Statue Ferry, or for any other reason. Statue Ferry shall not assign or encumber or attempt to assign or encumber the letter of credit.

17. INDEMNIFICATION

- (i) Shall for itself, its successors, and assigns defend, indemnify, protect and save harmless New Jersey, its officials, officers, agents, employees, successors, assignees, contractors, invitees, and does hereby release New Jersey, its officials, officers, agents, employees, successors, assignees, contractors, invitees, from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of any act, error, or omission of Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees, express or implied in the performance of this Agreement. Statue Ferry shall, at its own expense, appear, defend, and pay all charges for attorneys and all costs and other expenses arising from such suit or claim in connection therewith. If any judgement shall be rendered against New Jersey for which indemnification is provided under this Paragraph, Statue Ferry shall, at its own expense, satisfy and discharge the same. New Jersey shall require and enforce the requirement that New Jersey's food and beverage concessionaire shall obtain and maintain comprehensive general public liability insurance covering the concessionaire's operations adjacent to and within the ferry service facilities area in accordance with Paragraph 1B(ix) of this Agreement.
- (ii) Shall as soon as practicable after a claim has been made against it, give written notice thereof to New Jersey, along with full and complete particulars of the claim. If the suit is brought against New Jersey or any of its officials, officers, agents, employees, successors, assignees, contractors, invitees, Statue Ferry shall expeditiously forward or have forwarded to New Jersey every demand, complaint, notice, summons, pleading, or other process received by Statue Ferry or its representatives.
- (iii) New Jersey shall as soon as practicable after a claim has been made against it, give written notice thereof to Statue Ferry, along with full and complete particulars of the claim. New Jersey shall expeditiously forward or have forwarded to Statue Ferry every demand, complaint, notice, summons, pleading, or other process received by New Jersey.
- (iv) Statue Ferry's liability under this Paragraph shall continue after the termination or expiration of this Agreement with respect to any liability, loss, expense or damage to third parties resulting from acts occurring prior to termination or expiration in accordance with the pertinent statute of limitations.

- (v) Statue Ferry's indemnification obligation shall not be limited by, but is in addition to the insurance obligations contained in this Agreement.

18. INSURANCE

A. Within the designated cross-hatched areas on Exhibit A and A-1, assigned to Statue Ferry for its use pursuant to this Agreement. Statue Ferry shall at all times during the term hereof procure, maintain or cause to be maintained at the sole cost and expense of Statue Ferry, insurance of the types and amounts hereinafter provided:

- (I) Statue Ferry shall, in the event of damage or destruction (except for damage or destruction caused by the negligent act of any person using the pier area other than Statue Ferry as provided in Paragraph 1B(iii) of this Agreement), repair or replace those buildings structures, equipment, furnishings and improvements determined by New Jersey to be necessary to satisfactorily discharge Statue Ferry's obligations under this Agreement and for this purpose shall provide fire and extended coverage on both the Statue Ferry improvements and New Jersey improvements including all buildings, walkways, piers, bulkheads and similar structures and all replacements and additions thereto, and all fixtures, equipment and other property attached thereto, and/or physically incorporated therein, as part of the ferry service facilities area.
- (ii) Statue Ferry shall provide comprehensive general public liability insurance as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsement limiting the breadth of coverage (including coverage for product liability, liquor law legal liability, protection and indemnity, and for any Statue Ferry owned or operated motor vehicles, and broad form contractual liability, completed operations and broad form property damage endorsements) against claims for bodily injury, death or property damage occurring on, in or about the ferry services facility area. Such insurance shall be in an amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event, the limits of liability shall not be less than Five Million (\$5,000,000.00) Dollars per occurrence and Five Million (\$5,000,000.00) annual aggregate and property damage of at least Twenty Five Thousand (\$25,000.00) per occurrence and Fifty Thousand (\$50,000.00) Dollars annual aggregate. If claims reduce available insurance below the required per occurrence limits, Statue Ferry shall obtain additional insurance to restore the required limits. The limits of said policies shall be increased from time to time to meet changed circumstances including but not limited to changes in the purchasing power of the dollar as measured by changes in the U.S. Consumer Price Index and changes indicated by the course of plaintiffs' verdicts in personal injury actions.
- (iii) Workers' Compensation and employer's liability insurance applicable to the laws of the State of New Jersey and containing a Longshoreman's and Harbor Worker's Compensation endorsement, with limits of not less than One Hundred Thousand (\$100,000.00) Dollars per occurrence for bodily injury liability; and One Hundred Thousand (\$100,000.00) Dollars occupational disease per employee; with an aggregate limit of Five Hundred Thousand (\$500,000.00) Dollars for occupational disease.

- (iv) Such other insurance, and in such amounts as may from time to time be reasonably required by New Jersey against other insurable hazards which at the time are commonly insured against in the case of operations similar to that provided for in this Agreement with due regard to the type of improvements, construction, use, or occupancy thereof. If Statue Ferry objects to obtaining the type of insurance or amount thereof required by New Jersey under Paragraph 18A(1) - (iii) above, the matter shall be submitted to a risk management consultant mutually satisfactory to New Jersey and Statue Ferry and whose determination shall be conclusive and binding on New Jersey and Statue Ferry. The procedure herein above set forth shall apply whenever, and as often as, New Jersey may require, pursuant to this Paragraph, that Statue Ferry obtain other insurance or obtain increased amounts of insurance coverage. However, the determination by the risk management consultant regarding a specific type or amount of insurance shall be binding for a period of two (2) years after the date of the determination. The costs of the risk management consultant shall be paid by New Jersey. Within thirty (30) days after New Jersey's written demand therefor, Statue Ferry shall reimburse New Jersey for all reasonable and customary costs incurred by New Jersey in said process, or the cost shall be deemed unpaid Additional Compensation under the terms and conditions of this Agreement and may be collected as such.

B. All insurance policies shall name the State of New Jersey, Department of Environmental Protection as an additional insured and shall be effected by valid enforceable policies issued by insurers of responsibility and licensed or authorized to do business in the State of New Jersey. On or before the effective date of this Agreement, Statue Ferry shall deliver the original policies or certificates thereof to New Jersey. At least ten (10) days prior to the expiration date of any policy, a certificate of renewal or the renewal policy for such insurance shall be delivered by Statue Ferry to New Jersey, together with satisfactory evidence of payment of the then due premiums on such policy. All certificates shall be signed by Statue Ferry's insurance agent or insurer and shall be accompanied by the following statement attested to by Statue Ferry's senior risk management officer; "I certify that have reviewed the insurance specifications of the Agreement for which the attached certificate was issued, and that the insurance contracts identified therein meet all of said specifications." To the extent obtainable, all such policies shall contain agreements by the insurers that:

- (I) no act or omission by Statue Ferry shall impair or affect the rights of the insured to receive and collect the proceeds under the policy;
- (ii) such policies shall not be cancelled except upon twenty (20) days prior written notice to each named insured and loss payee; and
- (iii) the coverage afforded thereby shall not be affected by the performance of any work in or about the ferry service facilities area.

In addition, all policies shall contain endorsements that the rights of the insured to receive and collect the proceeds shall not be diminished because of any additional insurance carried by Statue Ferry for its own account.

C. New Jersey shall not be required to prosecute any claim against any insurer or to contest any settlement proposed by any insurer, provided that Statue Ferry may, at its cost and expense, prosecute any such claim or contest any such settlement, and in such event Statue Ferry may bring any such prosecution or contest in the name of New Jersey and Statue Ferry and New Jersey shall cooperate with Statue Ferry and will join therein at Statue Ferry's written request upon receipt by New Jersey of an indemnity agreement from Statue Ferry pursuant to which Statue Ferry agrees to indemnify New Jersey against all costs, liabilities and expenses in connection with such cooperation, protection or contest.

D. Insurance claims by reason of damage or destruction to any portion of the ferry service facilities area shall be adjusted with the insurance companies by and at the sole cost and expense of Statue Ferry except that in case of any particular casualty resulting in damage or destruction exceeding One Hundred Thousand (\$100,000.00) Dollars in the aggregate, no adjustment shall be made with the insurance companies without the prior written approval of New Jersey. Said approval shall not be unreasonably withheld or delayed.

E. Each payment for single loss which does not exceed One Million (\$1,000,000.00) Dollars shall be made directly to Statue Ferry, shall be used by Statue Ferry solely for reconstruction of the ferry services facility area as provided in Paragraph 18 of this Agreement, and all other losses (including all losses which exceed One Million (\$1,000,000.00) Dollars under any such policy shall be made payable to the Largest Bank in New Jersey or such other commercial bank as New Jersey and Statue Ferry may agree, as trustee (the "Insurance Trustee"), to be held in trust and applied as provided in Paragraph 19 of this Agreement.

F. Should Statue Ferry fail to affect, maintain or renew any insurance provided for in this Paragraph 18, or to pay the premium therefor when due, or to deliver to New Jersey any of such policies or certifications when due hereunder, New Jersey, at its option, shall have the right, upon written notice to Statue Ferry to require Statue Ferry to immediately suspend the operation of the ferry service until such insurance is obtained in compliance with this Agreement; provided, however, that nothing herein shall prevent New Jersey from declaring a default pursuant to the terms of this Agreement.

G. The insurance requirements set forth in this Paragraph 18 shall in no way be intended to modify, limit or reduce the indemnifications herein made by Statue Ferry to New Jersey or to limit Statue Ferry's liability hereunder to the proceeds of, or premiums due upon, the policies of insurance required to be maintained by Statue Ferry under this Agreement nor shall the insurance requirements preclude New Jersey from taking such other actions as are available to it under any provisions of this Agreement or otherwise in law.

19. IMPROVEMENTS

A. If the improvements on the ferry service facilities area or any part thereof shall be damaged or destroyed by fire or other casualty, Statue Ferry shall, as promptly as possible after Statue Ferry has knowledge of such damage or destruction, notify New Jersey thereof.

B. Unless such loss was caused by Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees, New Jersey shall promptly and diligently after any damage or destruction, and at its sole cost and expense, repair or restore the improvements to substantially the same condition as existed prior to such damage or destruction or New Jersey may direct Statue Ferry to

repair the same on mutually agreeable terms, including abatement of consideration payable hereunder; provided, however, that if such loss occurs as a result of persons allowed by New Jersey to use the Pier shown on Exhibit A-1., pursuant to the authority reserved to New Jersey in Paragraph 1B(I) the damage shall be repaired by Statue Ferry as provided in the said Paragraph 1B(I) .

C. If the damage incurred is so extensive that the same cannot be repaired in ninety (90) days from occurrence, (1) New Jersey shall use its best efforts to relocate the operations of Statue Ferry within Liberty State Park failing in which (2) Statue Ferry at its option, with approval of the Service, may terminate this Agreement.

D. In the event such loss was caused by action(s) of Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees, Statue Ferry shall promptly and diligently after any such damage or destruction, and evaluation of the damage by the insurer, and at its sole cost and expense, repair or restore the improvement to substantially the same condition as existed prior to such damage or destruction or as otherwise mutually agreed upon by New Jersey and Statue Ferry in either case, irrespective of the sufficiency of any fire or other insurance proceeds payable with respect thereto. The repair and restoration of the improvement required by this Paragraph 19 shall be subject to the prior written approval of New Jersey.

E. All insurance proceeds required by the terms of this Agreement to be expended by Statue Ferry for the repair or restoration of the improvements which are paid to the Insurance Trustee shall be disbursed in the manner hereinafter provided.

F. In the event of any restoration, repair, replacement or rebuilding of any improvements to the ferry service facilities area due to their damage or destruction by fire or any other cause, (hereinafter referred to in this Paragraph 19 as the "work"), the disbursement of any monies held by the Insurance Trustee shall be paid in stage payments based upon a schedule to be provided by Statue Ferry and approved by New Jersey. Each stage payment shall be made to Statue Ferry prior to performance of the work to enable Statue Ferry to perform the necessary work for each such stage. Disbursement of any stage payment after the first payment shall be made to Statue Ferry upon receipt by the Insurance Trustee of certificates of the architect, engineer or construction manager in charge of the work certifying to the cost and completion of the work performed in the previous stage, and upon satisfactory proof that there are no liens or financing statements under the Uniform Commercial Code filed and undischarged pertaining to that portion of the work. The Insurance Trustee may require the submission to it of any additional data reasonably required by it to assure that the payment is in all respects proper. All payments shall be received by Statue Ferry in trust to pay the cost of the work and shall not be co-mingled with Statue Ferry's other funds. New Jersey and the Insurance Trustee shall have the right to examine Statue Ferry's contracts, books and records pertaining to the work. Nothing herein shall prevent the Insurance Trustee from imposing such reasonable additional conditions to the disbursement of funds as it may in the circumstances deem prudent and necessary to achieve the prosecution and completion of the work and the full and due payment thereof.

G. If the cost and expense of such repairs or restoration of the improvement shall exceed the amount of any such net proceeds, the deficiency shall be paid first out of Statue Ferry's own funds to the extent of the deficiency or estimated deficiency before Statue Ferry shall be entitled to receive any portion of the net proceeds pursuant to Paragraph 19F above. If the amount of the net proceeds received by Statue Ferry or the Insurance Trustee, as the case may be, exceed the cost and expense of such restoration,

Statue Ferry shall retain, or the Insurance Trustee shall pay to Statue Ferry, any such excess. No payment of any such excess shall be made to Statue Ferry if any monetary default or default which can be cured upon the payment of the excess insurance funds shall have happened and be continuing under this Agreement. In such an event, any such funds shall be paid to New Jersey to be applied to the complete or partial cure of any such default.

H. After paying or providing for the cost of the work, the expense and fees of the Insurance Trustee may be charged against the fund possessed by it to the extent funds are available for services performed by it.

20. NO INTERFERENCE WITH STATE PARK - PARK CLOSURE

A. Shall, if New Jersey is unable to give or continue Statue Ferry's possession and use of the facilities and area provided under this Agreement because of national or local emergency, calamity, epidemic, or strike; suspend operations at the direction of New Jersey for the period during which possession cannot be delivered to Statue Ferry. During such period New Jersey may immediately re-enter the facilities provided under this Agreement and remove any and all persons or property either by suitable action or proceeding at law or in equity, or force, or otherwise without being liable to indictment, prosecution or damages therefor. Statue Ferry shall not be obligated to make any payment to New Jersey under Paragraph 4A of this Agreement for the period during which possession cannot be delivered to Statue Ferry for the reasons provided in this Paragraph 20.

B. Shall, at the direction of New Jersey, suspend, delay, or interrupt all or any part of its activities in the area and facilities provided under this Agreement for such period of time as New Jersey determines to be appropriate to protect public health or safety and/or State-owned property due to Statue Ferry's failure to perform any of the covenants, agreements and conditions herein contained where New Jersey determines that the continuance of the operation of the ferry service may detrimentally impact the State-owned property and/or the health or safety of persons on-site. Statue Ferry hereby waives any claim and New Jersey shall not be liable to any party claiming through Statue Ferry for damages, rent abatement, or compensation as a result of New Jersey's actions under this Paragraph 20 provided such action is taken by New Jersey solely as a direct result of the acts (or failure to act) of Statue Ferry as required by the provisions of this Agreement.

21. INSPECTION

Shall make available at the demand of New Jersey all of the property provided by New Jersey under this Agreement for inspection as New Jersey may deem necessary to assure compliance by Statue Ferry with the terms and conditions of this Agreement.

22. COMPLIANCE WITH FEDERAL AND STATE LAWS

Shall comply with all Federal and State laws, statutes, or regulations now or hereafter in effect and as may subsequently be amended pertaining to the payment of taxes or charges on prices, admissions and other fees charged by the Statue Ferry or otherwise assessed or levied on Statue Ferry's operation under this Agreement and make returns and pay all such taxes or charges immediately when due, and indemnify New Jersey against all liability, claims, loss or payment of any kind by reason of Statue Ferry's failure or omission to comply with any such law or regulation and/or pay all or any such taxes or charges.

23. DAMAGE AND REPAIRS

A. Statue Ferry shall repair any damage to the property provided pursuant to this Agreement, including but not limited to, docks, bulkheads, piers and pilings caused by Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees. In the event that the property provided pursuant to this Agreement or any other State-owned property is damaged or lost by any cause arising out of or related to any act, error or omission of Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees express or implied, Statue Ferry shall promptly repair or replace any property of any description which may be lost or damaged thereby at the sole expense of Statue Ferry.

B. All repairs by Statue Ferry pursuant to Paragraph 23A shall be completed in accordance with plans and specifications submitted to and approved by New Jersey.

24. APPROVAL

Any approval by New Jersey as provided in this Agreement shall not operate to limit the obligations of Statue Ferry assumed under this Agreement.

25. KEY OFFICIALS AND NOTIFICATION

A. The parties hereto agree that all submissions, approvals, and notices which may be required under this Agreement shall be forwarded by certified mail, return receipt requested and addressed to the Key Officials identified below:

Key Officials for New Jersey:

Director,
Division of Parks and Forestry
New Jersey Department of
Environmental Protection and Administrator,
501 East State Street, 4th Floor Office of the Director
PO Box 404
Trenton, New Jersey 08625-0404

and

Superintendent
Liberty State Park
Morris Pesin Drive
Jersey City, New Jersey 07305

Key Officials for Statue Ferry:

Mr. Kevin G. Moran, President
Circle Line-Statue of Liberty Ferry, Inc.
17 Battery Place - Suite 715
New York, New York 10004-1101

and

Mr. Rafael Abreu
Director of New Jersey Business Development
Circle Line-Statue of Liberty Ferry, Inc.
17 Battery Place - Suite 715
New York, New York 10004-1101

26. RECORDS AND REPORTS

A. Statue Ferry during the term of this Agreement, shall maintain adequate systems of internal control and shall keep complete and adequate records, books of account and data, including daily dated computer tapes and reports, monthly computer backup disc, and records which shall show in detail the total business transacted and will allow Statue Ferry to prepare financial statements in accordance with generally accepted accounting principles of the Total Gross Revenue from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park. Such dated computer tapes, discs, books and records maintained pursuant to this Agreement shall be segregated from other business matters of Statue Ferry and shall include, but not limited to, all federal, State and local tax returns; daily dated computer tapes and reports; monthly computer backup discs, sales books, duplicate bank deposit slips and bank statements.

B. Statue Ferry shall use the following records, procedures and reports to account for the total business transacted and the Total Gross Revenue realized by Statue Ferry from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park. For each classification of ticket offered, i.e., adult, child, group, or senior citizen, the tickets shall be serialized and color coded. Statue Ferry shall maintain a daily report itemizing each serialized ticket sold including lost or destroyed tickets for each classification of ticket. The daily reports, together with daily cash register tapes, daily computer tapes and reports, and monthly computer backup disc, shall be submitted to New Jersey as part of the monthly report required pursuant to Paragraph 26E below. The monthly report shall, in addition to the information required in Paragraph 26E below, include a statement signed by Statue Ferry's chief financial officer or his authorized designee that the daily reports accurately account for the number of tickets sold, including destroyed or lost tickets, for each classification of tickets.

C. All transactions of Statue Ferry shall be registered and recorded on accurate cash registers, totaling or computing machines or on other income recording devices which shall register each transaction sequentially and contain locked-in cumulative tapes with cumulative capacity satisfactory to New Jersey. All such machines and devices shall be approved by New Jersey prior to installation and Statue Ferry agrees to notify New Jersey of the name and serial numbers of all such machines and devices used and of any changes or additions within five (5) days thereof. All reports and data generated from or by such machines and devices shall be retained, and all transactions shall be recorded daily and posted monthly on books and records of accounts.

D. Statue Ferry shall use such accounting and internal control methods and procedures and keep such additional books and records as may be prescribed by New Jersey. New Jersey shall have the right to examine the record keeping procedures of Statue Ferry prior to the commencement of the term of this Agreement and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by Statue Ferry. All records maintained by Statue Ferry for the purposes of this Agreement shall be available for audit during normal business hours by an authorized representative of New Jersey to determine the adequacy of Statue Ferry's financial management system and internal control system that have been established to meet the terms and conditions of this Agreement and that the financial statements are fairly presented in accordance with generally accepted accounting principles. Statue Ferry shall maintain all records, books of account, data, dated computer tapes and reports, and monthly computer backup disc for a minimum of six (6) years after the date of the record.

E. Statue Ferry shall furnish to New Jersey by the fifteenth (15th) day of the succeeding month, monthly statements sworn to and verified by the chief financial officer of Statue Ferry or his authorized designee and in such form as may be requested by New Jersey, showing in detail the Total Gross Revenues from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations at Liberty State Park for each day of the previous month. The report shall itemize by serial number the daily tickets sold, including lost or destroyed tickets with a summary total for each category of ticket, to wit: adult, child, group and senior citizens. In addition, Statue Ferry shall, annually, as soon as possible but not later than sixty (60) days after the end of the first Calendar Year (ending on March 31st) and each succeeding Calendar Year during which this Agreement is in effect, submit to New Jersey a complete annual audit of Total Gross Revenue from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park for the Prior Calendar Year. Said audit shall be prepared by a Certified Public Accountant licensed to practice accounting in the State of New Jersey and shall for said Calendar Year express an opinion as to whether or not Statue Ferry's financial statements are fairly presented in accordance with generally accepted accounting principles, the effectiveness of the financial management systems and internal control procedures that have been established by Statue Ferry to meet the terms and conditions of this Agreement, the Total Gross Revenue from all tickets for passenger fares (including charter) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park and the total annual consideration due to be paid to New Jersey for said Calendar Year. Said audit shall be accompanied by a "Letter of Compliance" prepared by said Certified Public Accountant.

F. The failure or refusal of Statue Ferry to furnish any of the statements required to be furnished under this Agreement within fifteen (15) days after its due date, the failure or refusal of Statue Ferry to maintain adequate internal controls or to keep any of the records as required by this Paragraph or the existence of an unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by New Jersey, of more than five (5%) percent in any two (2) out of three (3) consecutive months or more than ten (10%) percent in one (1) month shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this Agreement and a default hereunder, which shall entitle New Jersey at its option, to terminate this Agreement in accordance with Paragraph 27C. In addition, the failure or refusal of Statue Ferry to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize New Jersey to make reasonable projections of the amount of gross receipts which would have been disclosed had the required statements been furnished or the required records maintained based upon such extrinsic factors as the auditors deem appropriate in making such projections. Statue Ferry agrees to pay any assessment based upon such reasonable projections with thirty (30) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this Agreement and a default hereunder.

27. TERMINATION

A. This Agreement shall terminate immediately at any time that the concession contract between the Service and Statue Ferry expires or is terminated by Service.

B. This Agreement shall terminate if Statue Ferry shall cease for any reason to be the authorized concessionaire of the Service or if Statue Ferry shall be rated as Unsatisfactory by Service. The term Unsatisfactory shall be as defined in the National Park Service Concessionaire Review Program.

C. This Agreement may be terminated by New Jersey at any time after thirty (30) days notice to Statue Ferry and Service for failure by Statue Ferry to comply with any of the terms and conditions of this Agreement or for failure of Statue Ferry to insure compliance by its officials, officers, agents, employees, successors, assignees, contractors, invitees, with the terms and conditions of this Agreement.

D. This Agreement may be terminated as specified in other Paragraphs of this Agreement.

E. This Agreement may be terminated by New Jersey if, at any time during the term of this Agreement Statue Ferry shall:

- (I) apply for or consent to the appointment of a receiver, trustee or liquidator of it or all or substantial part of its assets;
- (ii) admit in writing its inability to pay its debts as they mature;
- (iii) make a general assignment for the benefit of creditors;
- (iv) be adjudicated bankrupt or insolvent;
- (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an agreement with creditors to take advantage of any insolvency law, or any answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceedings, or corporate or other action shall be taken by it for the purpose of effecting any of the foregoing; or
- (vi) be subject to any order, judgement or decree, without the application, approval or consent of Statue Ferry, by any court of competent jurisdiction, approving a petition seeking reorganization of, or appointing a receiver, trustee or a liquidator of Statue Ferry or of all or a substantial part of its assets, and such order, judgement or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days.

F. In the event of any termination of or upon the expiration of this Agreement, New Jersey may at once re-enter and remove any and all persons occupying the assigned facilities. If Statue Ferry shall fail to remove any ticket machines and other similarly affixed equipment provided by and lawfully belonging to Statue Ferry and reasonably removable by Statue Ferry without damage to the property of New Jersey within fourteen (14) days from the date of termination or the expiration of this Agreement, New Jersey may appropriate the same to its own use without allowing any compensation therefor or may remove the same at the expense of Statue Ferry. New Jersey is hereby released from any and all claims for damages or loss which may be sustained by reason of such removal. In the event that Statue Ferry removes any such equipment, Statue Ferry hereby covenants to pay any and all damages which may be caused to the property of New Jersey by said removal.

28. REPORT OF INJURY

Any injury which shall occur to Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees, express or implied, on property provided by New Jersey under this Agreement and requiring medical intervention of which Statue Ferry shall be notified shall be reported to New Jersey in writing within one (1) day of the injury.

29. REQUIRED CLAUSES AND GENERAL CLAUSES

A. No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

B. Statue Ferry assures that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by Statue Ferry for the purpose of securing business.

C. Statue Ferry does hereby warrant and represent that this Agreement has not been solicited or secured, directly or indirectly, in a manner contrary to the Laws of the State of New Jersey and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of this Agreement by any conduct, including the paying or giving of consideration of any kind, directly or indirectly, to any State employee, official, officer, agent, successor, assignee, contractor, or invitee.

D. This Agreement constitutes the entire agreement between the parties, and all prior understandings, agreements, and representations have been merged herein.

E. The waiver by any party of any breach of this Agreement shall not be deemed to be a waiver of a subsequent breach of the same or any other covenants, conditions, or terms of this Agreement.

F. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than to those which it is held invalid or unenforceable, shall not be affected and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

G. The parties hereto agree that this Agreement may be amended, supplemented, changed, modified, or altered only upon mutual agreement of the parties hereto in writing.

H. Unless otherwise provided in this Agreement, all claims, counter claims, disputes and other matters in question between New Jersey and Statue Ferry arising out of, or relating to, Agreement or the breach of it shall be decided according to the Laws of the State of New Jersey in a court of competent jurisdiction within the State of New Jersey.

I. Statue Ferry shall, at all times, act as an independent principal and not as an agent or employee of New Jersey. Statue Ferry agrees not to enter into any agreement or commitment on behalf of New Jersey.

30. CORPORATE RESOLUTION

The Board of Directors of Statue Ferry has adopted a resolution authorizing the execution of this Agreement by Statue Ferry for the purposes and subject to the terms and conditions herein provided and has submitted a copy of said resolution to New Jersey in form and substance satisfactory to New Jersey.

31. QUIET POSSESSION

New Jersey agrees that Statue Ferry, on satisfactorily conforming with the covenants contained herein, shall peaceably and quietly have, hold and enjoy the Premises for the above stated Term.

32. HOLD OVER

If New Jersey permits Statue Ferry to remain in possession of the Premises after expiration of this Agreement without having executed a new written Agreement with New Jersey, then Statue Ferry shall occupy the Premises subject to all the terms, covenants and conditions contained in this Agreement. Such holding over by Statue Ferry shall not constitute a renewal or extension of this Agreement. New Jersey may, at its option, elect to treat Statue Ferry as one who has not removed at the end of its term and thereupon be entitled to all the remedies against Statue Ferry provided by Law.

33. CORPORATION - CERTIFICATE OF INCORPORATION

A. When Statue Ferry returns this Agreement, signed by Statue Ferry, to New Jersey for signature, Statue Ferry shall submit to New Jersey a certified copy of Statue Ferry's current Certificate of Incorporation. Statue Ferry shall not amend, modify or otherwise change the Certificate of Incorporation without first submitting the proposed amendment, modification or change to New Jersey for comment. New Jersey shall have a period of thirty (30) days to review any proposed amendment, modification or change before same can become effective.

B. When Statue Ferry returns this Agreement, signed by Statue Ferry, to New Jersey for signature and annually thereafter on the anniversary of the Effective Date, Statue Ferry shall submit to New Jersey a certificate of standing issued by the Secretary of State.

34. ENTIRE AGREEMENT - AMENDMENT

This Agreement, including all exhibits attached hereto, constitutes the entire agreement between the parties, and all prior negotiations, understandings, oral agreements, and representations have been merged herein. Upon the Effective Date of this Agreement, this Agreement supersedes and cancels all previous agreements covering the Premises or operation of Statue Ferry. This Agreement shall not be amended, supplemented, changed, modified or altered except upon mutual written agreement of the parties.

35. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances, other than to those to which it is held invalid or unenforceable, shall not be affected and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

36. TENANT AS INDEPENDENT PRINCIPAL

A. Statue Ferry is an independent principal and is not undertaking the Improvement, maintenance, management and operation of the Premises on behalf of New Jersey and it has no relationship with New Jersey in connection with this Agreement as New Jersey's agent, servant, employee, contractor or otherwise. Statue Ferry agrees not to enter into any agreement or commitment on New Jersey's behalf.

B. Statue Ferry shall have direct supervision of all its officials, officers, agents, employees, contractors and subcontractors, and sublessees performing any activity under this Agreement, Statue Ferry shall assure compliance by its officials, officers, agents, employees, contractors, sub-contractors and sublessee with this Agreement.

37. NO THIRD PARTY BENEFICIARIES

There shall be no third party beneficiaries of this Agreement and no person, firm or entity not a party to this Agreement shall be entitled to claim any right, benefit or presumption from or estoppel by this Agreement.

38. NEGOTIATED DOCUMENT


Each and every provision of this Agreement has been independently, separately and freely negotiated by the parties as if this Agreement were drafted by all parties hereto. The parties therefore waive any statutory or common law presumption which would serve to have this document construed in favor of or against any party as the drafter of this Agreement.

39. HEADINGS

The Paragraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates
written below.

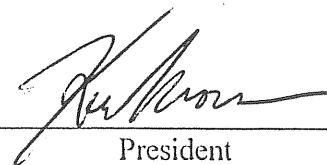
STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

By: 
Date Signed: 8-5-04

ATTEST:

CIRCLE LINE-STATUE OF
LIBERTY FERRY, INC.

By: _____
Secretary


By: 
President

Date Signed: _____

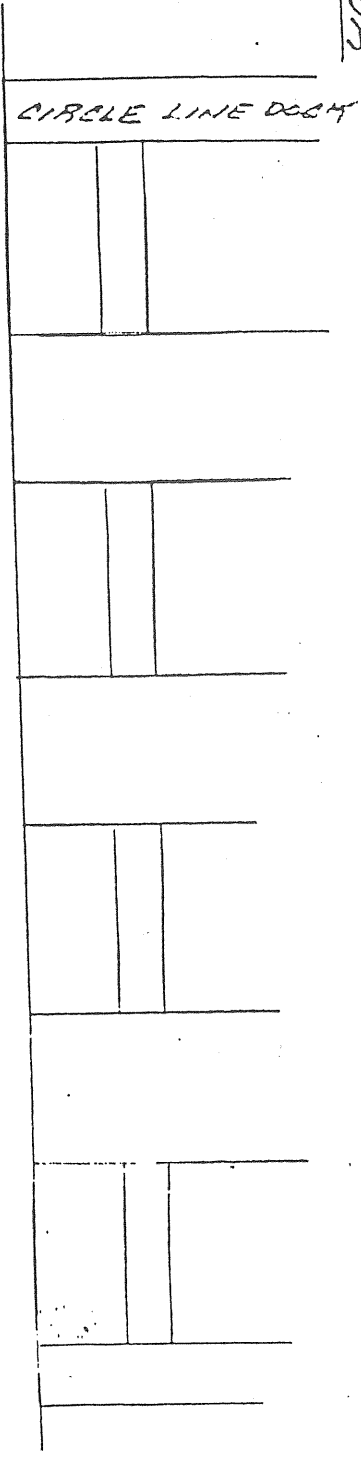
Date Signed: 7/27/04

This Agreement has been review and
approved as to form by:

Peter C. Harvey
Attorney General
State of New Jersey

By: 
Deputy Attorney General
Date Signed: 8/11/04

LIBERTY STATE PARK
TRAVEL TERMINAL
FIRST FLOOR



FERRY CONCOURSE

 AREAS OF LIABILITY

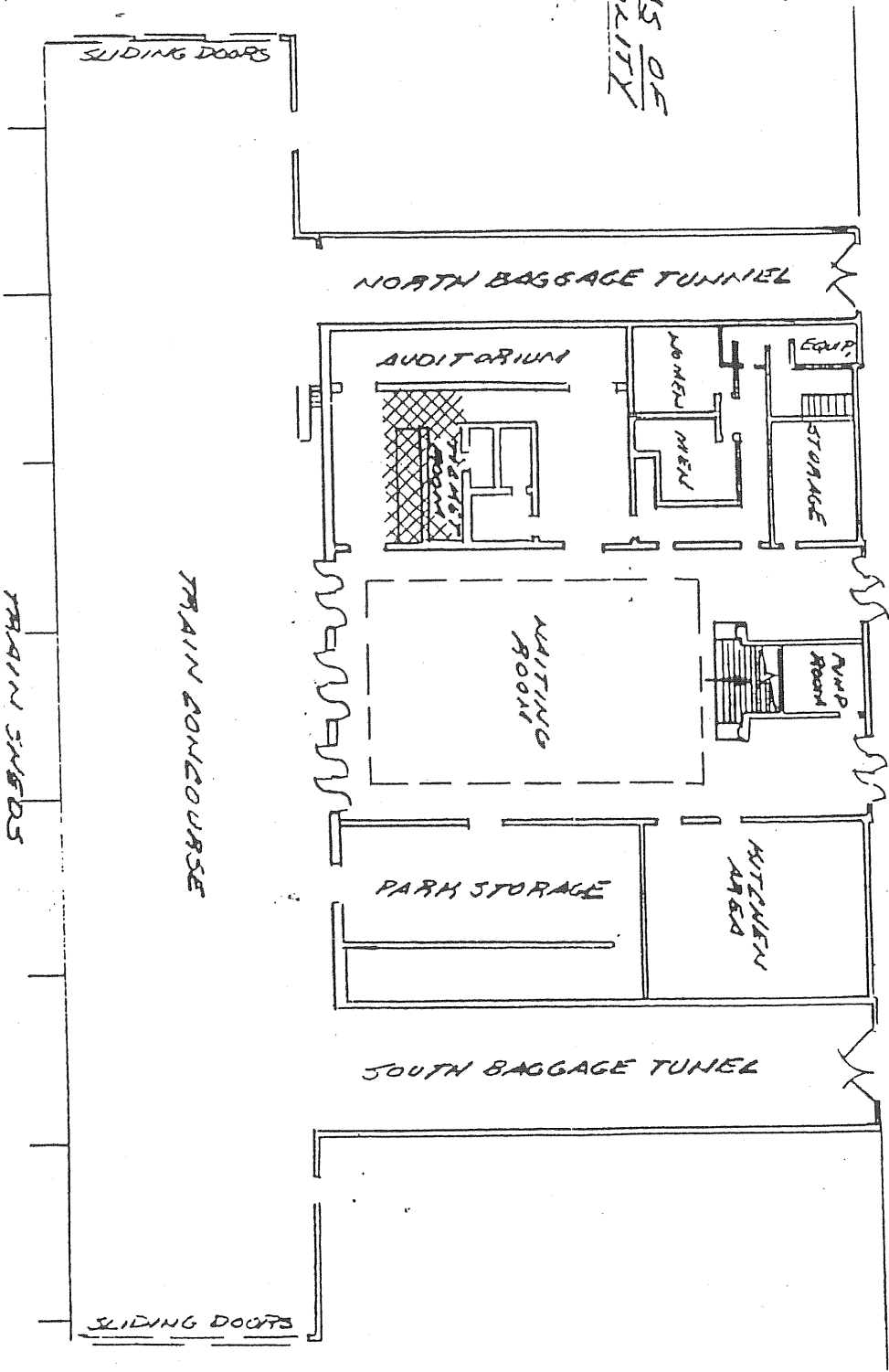
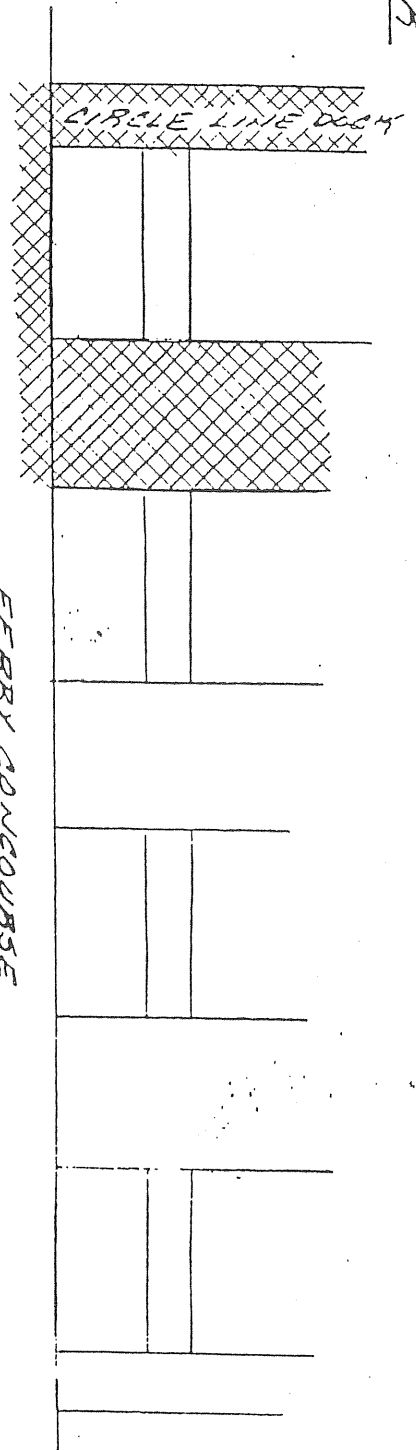


Exhibit A

LIBERTY STATE PARK
LIBERTY TERMINAL
FIRST FLOOR



FERRY CONCOURSE

AREAS OF
LIABILITY

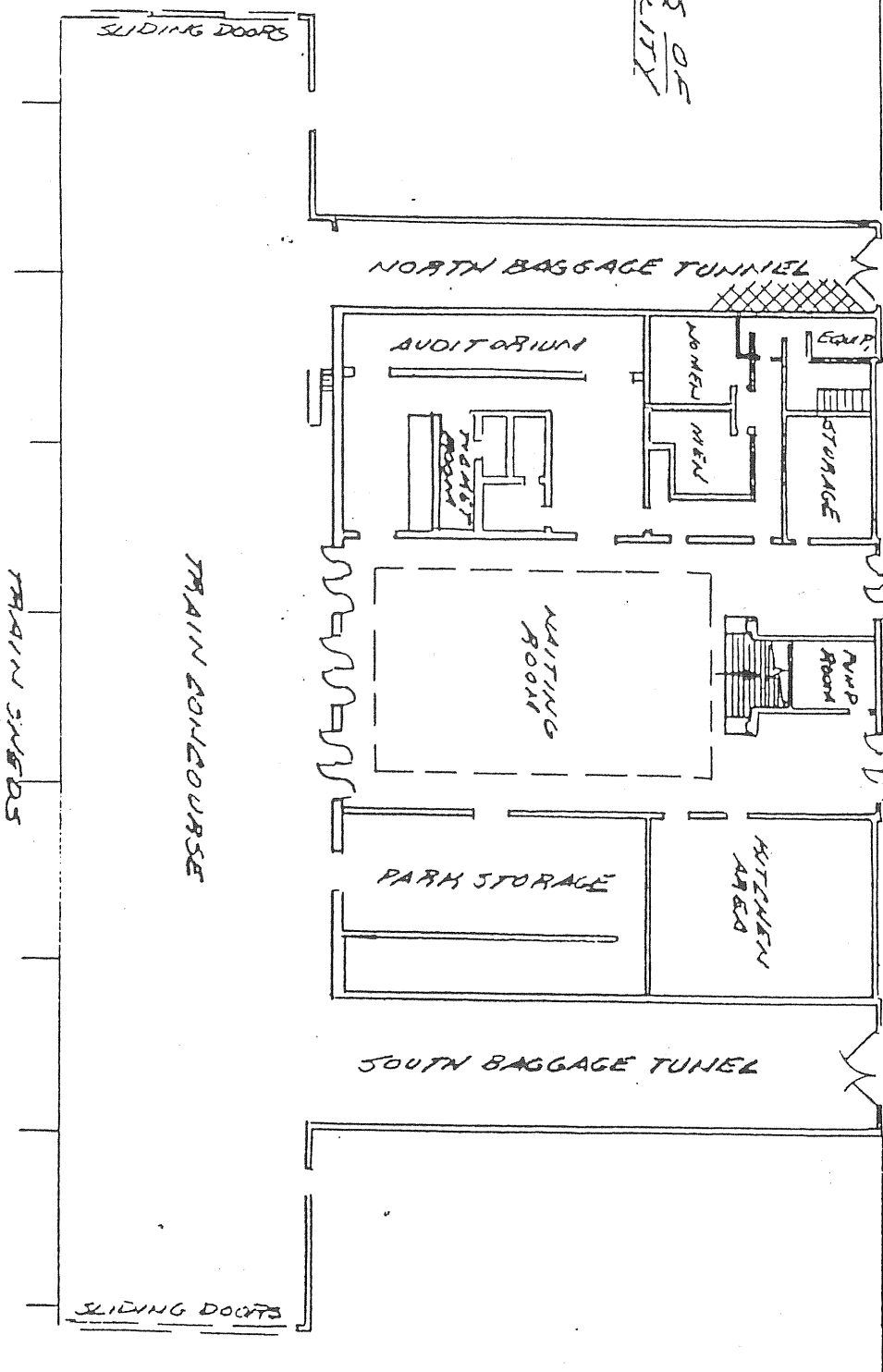


Exhibit A1

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NATIONAL PARK SERVICE
STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND
AND
STATE OF NEW JERSEY,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
DIVISION OF PARKS AND FORESTRY**

Article I. BACKGROUND

This **MEMORANDUM OF UNDERSTANDING**, hereinafter called **AGREEMENT**, is entered into by and between the United States Department of the Interior, National Park Service, acting through the Superintendent Statue of Liberty National Monument and Ellis Island, hereinafter referred to as **NPS**; and, the State of New Jersey, Department of Environment Protection, Division of Parks and Forestry, hereinafter referred to as **DEP**.

WHEREAS, the Statue of Liberty National Monument and Ellis Island was established by Presidential Proclamation as a symbol to the world of the dreams and aspirations which have drawn millions of immigrants to America; and

WHEREAS, the Statue of Liberty stands as eternal as the symbol of the freedom which has made a living reality in the United States for men of all races, creeds, and national origins who have united in allegiance to the Constitution of the United States and to the imperishable ideals of our free society; and

WHEREAS, the NPS is responsible for the administration of the Statue of Liberty National Monument and Ellis Island and the safe transportation of millions of visitors every year who visit Liberty and Ellis Islands; and

WHEREAS, the NPS is currently in the process of developing a prospectus to seek offers for a new contract to operate a ferry concession to transport visitors to Liberty and Ellis Islands; and

WHEREAS, DEP is responsible for the administration of Liberty State Park which is the current embarkation point for the Statue of Liberty National Monument and Ellis Island ferry concession; and

WHEREAS, successful conclusion of the process to obtain offers to provide transportation to the Statue of Liberty National Monument and Ellis Island is dependent upon obtaining a Memorandum of Understanding with the DEP to operate a ferry service from Liberty State Park; and

WHEREAS, the DEP desires to facilitate the process of establishing a new ferry concession contract in order to accommodate the millions of visitors who access the Statue of Liberty National Monument and Ellis Island from Liberty State Park.

NOW THEREFORE, in consideration of the mutual covenants herein contained the parties agree as follows:

Article II. RESPONSIBILITIES OF THE PARTIES

A. DEP hereby agrees to issue a Memorandum of Understanding to operate a ferry service for the transportation of passengers between Liberty State Park and Liberty and Ellis Islands to the party which is designated by the NPS to provide such service and enters into a concession contract with the

NPS. The said MOU shall be in a form substantially the same as the MOU attached hereto as Exhibit A, and the fee for said MOU, payable to the DEP, shall be an amount equal to the greater of One Hundred Thousand (\$100,000.00) Dollars or seven and one-half (7 1/2 %) per cent of the Total Gross Revenue from ticket sales for embarkation from Liberty State Park. Any agreement for additional space is at the sole discretion of the DEP and will include an additional fee to be determined at fair market value. The term of said MOU shall be coterminous with the period for which the ferry concession operator is authorized to provide ferry service from Liberty State Park by the NPS.

B. The NPS shall provide the DEP with thirty (30) days advance written notice of the date when the new ferry concession contract becomes effective.

Article III. TERM OF AGREEMENT

Unless sooner terminated, this AGREEMENT shall be effective upon execution by both parties and shall remain in effect for fifteen (15) years from that date.

Article IV. TERMINATION

If either party fails to observe any of the terms and conditions of this Agreement, the other party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination, effective at the end of the thirty (30) day period.

Article V. KEY OFFICIALS/PERSONS

For the National Park Service:

Cynthia R. Garrett
Superintendent, Statue of Liberty National Monument and Ellis Island
Liberty Island
New York, NY 10004

For the DEP:

Joshua Osowski Superintendent,
Liberty State Park
200 Morris Pesin Dr.
Jersey City, NJ 07305

Frank Gallagher, Administrator
Liberty State Park
200 Morris Pesin Dr.
Jersey City, NJ 07305

Article VI. GENERAL PROVISIONS

1. All obligations of the NPS hereunder are subject to the laws and regulations applicable to the NPS. The NPS shall have no obligation to reimburse the DEP for any services rendered pursuant to this AGREEMENT.

2. No member of, or delegate to, Congress, or resident commissioner, shall be admitted to any share or part of this AGREEMENT, or to any benefit that may arise therefrom.

3. All applicable requirements of P.L.2005, c.51 shall apply to this Agreement for the purpose of preserving the integrity of State government procurement. Any and all such applicable requirements of P.L.2005, c.51 shall be deemed to be material terms of this Agreement.

4. This Agreement and the obligations of the NPS hereunder shall be subject to the availability of funding, and nothing contained herein shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

5. Nothing in this Agreement shall be construed as binding the DEP to any expend in any one fiscal year any sum in excess of appropriations made by the New Jersey State Legislature or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the DEP in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names.

Dated at Jersey City, New Jersey, this 13th day of December 2006.

UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

By: Cynthia R. Garrett
Cynthia R. Garrett, Superintendent
Statue of Liberty National Monument and Ellis Island

For DEP

By: Amy Cradic
Amy Cradic, Assistant Commissioner
Natural and Historic Resources